



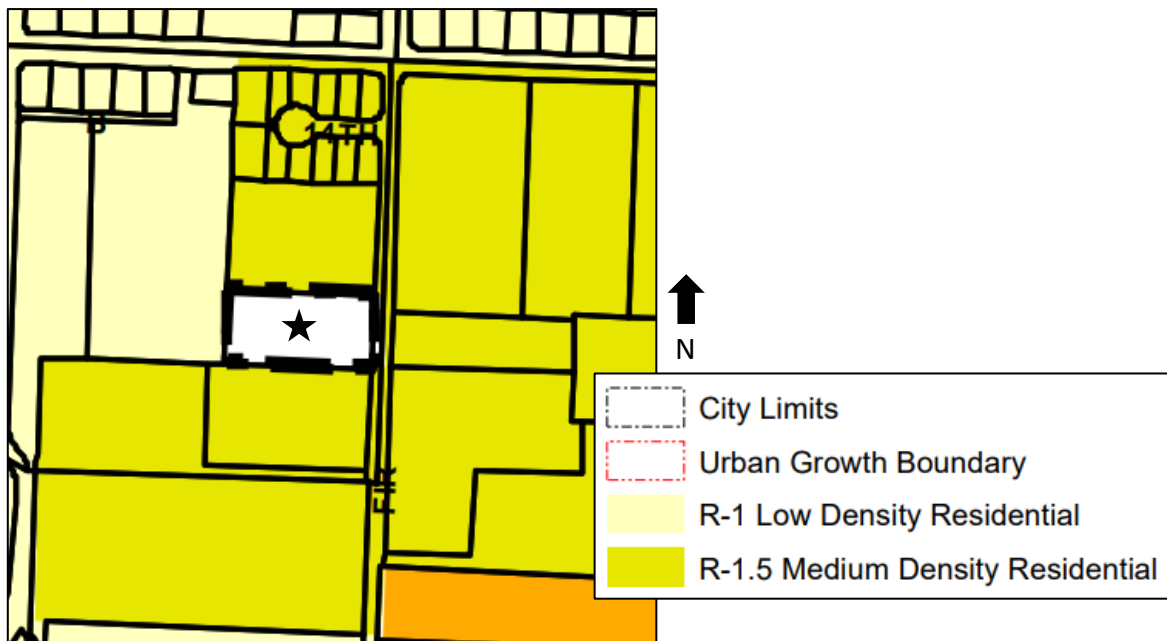
City of Canby

File #: ANN/ZC 21-02 – 1495 S. Fir St. Annexation

HEARING DATE: September 27, 2021
STAFF REPORT DATE: September 17, 2021
TO: Planning Commission
STAFF: Brianna Addotta, Associate Planner

Proposal

The applicant requests approval to annex 1.37 acres of land located at 1495 S. Fir Street into the City of Canby. As part of the annexation request, the applicant is also seeking an amendment to the zoning map which would change the annexed property from Clackamas County Exclusive Farm Use (EFU) to City of Canby Medium Density Residential (R-1.5).



Staff Recommendation

Based on the application submitted and the facts, findings, and conclusions of this report, staff recommend that the Planning Commission recommends Approval of **ANN/ZC 21-02** to the City Council pursuant to the Conditions of Approval presented in **Section VI** at the end of this report.

Project Overview

This proposal is a request to annex a parcel of land on south Fir Street between south 13th and 16th Avenues. The property address is 1495 S. Fir Street, the tax lot number is 41E04CA 01400. This zone change is a request to rezone the subject properties to City of Canby zoning of Medium Density Residential R-1.5 in accordance with the corresponding City Comprehensive Plan Map land use designation and prior approved Development Concept Plan (DCP). The area is currently within Clackamas County's jurisdiction and is presently zoned Exclusive Farm Use (EFU). The zone designation will take effect when the properties are annexed as indicated in this application.

The annexation area is located within the City of Canby's Urban Growth Boundary. The City of Canby Comprehensive Plan has envisioned the ultimate urbanization of this area and its intended land use, and the Comprehensive Plan Map for these particular lots indicates a medium density residential use designation.

Property/Owner Information

Location	1495 S. Fir St.
Tax Lot(s)	41E04CA 01400
Property Size	1.31 acres
Comprehensive Plan	Medium Density Residential
Zoning	EFU
Owner	Brian and Bridget DuPont
Applicant	Blake DuPont
Application Type	Annexation and Quasi-Judicial/Legislative & Zone Change – Type IV
City File Number(s)	ANN 21-02 and ZC 21-02

Exhibits of Record

- A.** Land Use Application materials – Annexation and Zone Change, Type IV;
- B.** Applicant Narrative
- C.** Annexation Petition
- D.** Pre-Application Conference Summary
- E.** Southwest Canby Development Concept Plan
- F.** Neighborhood Meeting Materials and Summary
- G.** Survey of Property, Legal Description, and Warranty Deed
- H.** Maps
- I.** Transportation Planning Rule Memo

I. Existing Conditions:

This proposal is a request to annex a parcel of land on south Fir Street between south 13th and 16th Avenues. The property address is 1495 S. Fir Street, the tax lot number is 41E04CA 01400. As part of the annexation proposal, the subject property would be rezoned to Medium Density Residential (R-1.5). The area is currently within Clackamas County's jurisdiction and is presently zoned Exclusive Farm Use (EFU). This zone change is a request to rezone the subject properties to City of Canby zoning of Medium Density Residential R-1.5 in accordance with the corresponding City Comprehensive Plan Map land use designation. The zone designation will take effect when the properties are annexed as indicated in this application.

SW Canby Development Concept Plan:

City of Canby's annexation ordinance requires either a Development Concept Plan (DCP) or a Development Agreement (DA) for most properties that are a part of an annexation request. This property is within the South Canby Development Concept Plan, which was approved in 2018 concurrent with the Beck Pond Subdivision, located to the south of the subject property. Subsequent to that approval, the owners of the property immediately to the south (1547 S. Fir St., Tax Lot 1500) appealed the approval (APP 18-02). The appeal of the subdivision was not successful but City Council did choose to modify the original approval with an amendment. The specified amendment included an additional condition of approval that the 'approval of the Beck Pond subdivision shall not determine the configuration of any future development on Tax Lot 1500. Any future development shall be judged on its' own merits at the time when an application is submitted.' Based on information in APP 18-02 and information provided by the owners of Tax Lot 1500 at the neighborhood meeting, the future proposal for development of their tax lot will likely include an east-west roadway from the current terminus of SW 15th Avenue eastward to S Fir Street with no street stub to the north to serve the proposed annexation site. While the applicant has submitted for annexation and zone change, and not a subdivision, at this time, they've provided a potential layout which shows conformance to the amended DCP taking access off of S. Ivy St.

Surrounding Land Uses:

<i>Direction</i>	<i>Zoning</i>	<i>Land Uses</i>
North	R-1.5	Hope Village Cottages
West	R-1	Residential (Elmwood Mobile Home Community)
South	R-1.5	Residential Single Family
East	R-1.5	Hope Village Main Campus

Utilities/Sewer/Disposal/Fire/Police:

- Water and electric service will be provided by Canby Utility.
- Wastewater, storm drainage, and streets are managed by the City of Canby Public Works.

- Disposal services are provided by Canby Disposal.
- Fire services are provided by Canby Fire District.
- Police services are provided by Canby Police Department.

Staff has provided conditions of approval at the end of this staff report (Section VI), written to ensure the necessary public infrastructure is constructed and installed in accordance with all applicable city, county, state, and federal requirements.

II. Approval Criteria:

In addition to components of the City of Canby Comprehensive Plan, applicable criteria used in evaluating (ANN 20-01/ZC 20-01) are listed in the following sections of the City of Canby's Land Development and Planning Ordinance:

- CMC 16.08 General Provisions
- CMC 16.18 R-1.5 Medium Density Residential Zone
- CMC 16.54 Amendments to Zoning Map
- CMC 16.84 Annexations
 - ORS 222.225 Annexations
- CMC 16.88 General Standards and Procedures
- CMC 16.89 Application and Review Procedures

III. Summary of Findings:

Consistent with Section 16.84 of the Canby Land Development and Planning Ordinance (the Ordinance), Chapter 16 of the Municipal Code, the proposed application qualifies as an Annexation, and is part of the City of Canby Annexation Development Map per Figure 16.84.040.

Section 16.84 of the Ordinance identifies the purpose and scope of annexations and sets forth regulations for annexing land into the City. Section 16.84 and specifically ORS 222.225 govern the application process for annexation and sets forth the standards and approval criteria for which the applicant must respond to in their narrative within their submitted application materials. Staff incorporates the applicant's written response as findings in support of the criteria. Additional facts and findings are provided herein.

Canby Municipal Code (CMC) Section 16.84 Annexations

CMC 16.84.020 – State Regulations.

The regulations and requirements of Oregon Revised Statutes Chapter 222 are adopted by reference and made a part of this division. (Ord. 740 section 10.6.20, 1984)

Finding: The State of Oregon passed Senate Bill 1573, effective March 15, 2017. The bill eliminated specific requirements for elections when processing annexations if specific criteria are met, specifically the annexation must demonstrate that:

1. It was submitted on behalf of all owners of land in the annexation territory;
2. The annexation territory must be included within the urban growth boundary of the city or Metro and is, or will be, subject to acknowledged comprehensive plan of city;

3. At least one parcel in the annexation territory must be contiguous to city limits; and
4. The proposal must conform to all other requirements of the city's ordinances.

Staff finds that the proposal meets the above criteria. The application contains a signed petition of owners of record in the application, is within the urban growth boundary, is subject to the comprehensive plan and has contiguous city limits with property to the north, south, east and west. As a condition of approval, the proposal shall meet all other requirements as stated in the city's development code and ordinances. Therefore, this annexation proposal may forego the elections proceedings stated in CMC 16.84.030.

CMC 16.84.030 – Filing Procedure.

Whenever an application for annexation is filed, it shall be reviewed in accordance with the following procedures:

A. Application Filing Deadlines. Application deadlines are established to permit public hearings by both the Planning Commission and the City Council in time to meet state and county requirements for submitting ballot information for these election dates. Application deadlines are as follows:

1. Regular annexation dates are in May and November. Annexations must be filed with the City before 5:00 p.m. on the last working day in August for a ballot election in May and the last working day in February for a ballot election in November. Incomplete applications may result in missing these planned election dates, at the City's discretion.
2. Annexations can be scheduled for a special election provided that all costs associated with the special election are covered by the applicant. Special elections will be scheduled by the City Council following the required City Council hearing on the application.

Finding: The above criteria are not applicable to this proposal. This annexation is not processed through an election proceeding.

B. Application Submittal. Application procedures shall be as described in Chapter 16.89, on forms provided by the Planning Department. (Ord. 899 section 6, 1993; Ord. 740 section 10.6.30, 1984; Ord. 981 section 36, 1997; Ord. 1019 section 18-20, 1999; Ord. 1080, 2001; Ord 1237, 2007; Ord. 1294, 2008)

Finding: Staff finds this criterion has been met; the application procedures and forms were completed as prescribed.

CMC 16.84.040 – Standards and criteria.

A. The following criteria shall apply to all annexation requests.

1. The City of Canby Annexation Development Map shall determine which properties are required to submit either (See Figure 16.84.040):
 - a. A Development Agreement (DA) binding for all properties located within the boundaries of a designated DA area as shown on the City of Canby Annexation Development Map. The terms of the Development Agreement may include, but are not limited to:

1. Timing of the submittal of an application for zoning
2. Dedication of land for future public facilities including park and open space land
3. Construction of public improvements
4. Waiver of compensation claims
5. Waiver of nexus or rough proportionality objections to future exactions
6. Other commitments deemed valuable to the City of Canby

For newly annexed properties that are within the boundaries of a DA area as designated on the City of Canby Annexation Development Map. A Development Agreement shall be recorded as a covenant running with the land, binding on the landowner's successors in interest prior to the City Council granting a change in zoning classification.

Finding: The applicant indicates that the proposed annexation area is within the SW Canby Development Concept Plan and that the development will conform to the requirements indicated in the plan for this area. A development agreement and signed covenant are not necessitated by this development proposal according to the City of Canby Annexation Development Map found in the Annexation Chapter of the CMC, but does require a DCP. Staff finds these criteria are met.

b. A Development Concept Plan (DCP) binding for all properties located within the boundaries of a designated DCP area as shown on the City of Canby Annexation Development Map. A Development Concept Plan shall address City of Canby infrastructure requirements including:

1. Water
2. Sewer
3. Stormwater
4. Access
5. Internal Circulation
6. Street Standards
7. Fire Department requirements
8. Parks and open space

For newly annexed properties that are within the boundaries of a DCP area as designated on the City of Canby Annexation Development Map: A Development Concept Plan shall be adopted by the Canby City Council prior to granting a change in zoning classification. (Ord 1294, 2008)

Finding: The proposed annexation is within the established SW Canby DCP Area and the development must conform to the requirements indicated in the plan for this area. The SW Canby DCP criteria approval can be met as conditioned.

2. Analysis of the need for additional property within the city limits shall be provided. The analysis shall include the amount of developable land (within the same class of zoning - low density residential, light industrial, etc.) Currently within the city limits; the approximate rate of development of those lands; and how the proposed annexation will affect the supply of developable land within the city limits. A supply of developable residential land to provide for the anticipated population growth over the following three years is considered to be sufficient;

Finding: The applicant has provided a needs analysis for single family residential lots in the City of Canby over the next five years using population projections and an account of residential development according to recently approved and in process single family residential land use applications.

In summary, the Current Single Family Residential (SFR) Lot Inventory (May 17, 2021) has been determined to be 60 lots, or a 10-month supply, based on current growth. The available SFR lot inventory is anticipated to climb with approval and development of several “In Process” subdivisions through late 2022, with the peak of the inventory being slightly less than a 3-year lot supply. The available inventory would then be projected to drop through the remainder of 2022, 2023 and 2024, unless other subdivision applications were submitted and approved for other subdivisions not currently being considered.

The DuPont annexation property is minor in the overall City of Canby buildable lot inventory. When developed as a single-family residential subdivision, it is anticipated to add approximately 6 SFR lots to the buildable SFR lot inventory, approximately a one-month supply. The first of these residences would be expected to be livable in early 2023, nearly two years from now. If no subdivision applications are submitted and approved between now and mid-2024, the available SFR lot inventory projected for July 1, 2024, would be approximately a one-year supply. However, additional applications for subdivisions and partitions are anticipated to be approved by the City of Canby over the next two years that would add to the City’s available inventory of buildable SFR lots.

Given the circumstances of the annexation and that this area is within the SW Canby DCP, has been planned for development, and addresses connectivity issues, staff concurs with the applicant and finds these criteria are sufficiently addressed. Staff finds that the land has already been designated for annexation through an application process guided by the established SW Canby DCP. This criterion is satisfied.

3. Statement of potential physical, aesthetic and related social effects of the proposed development on the community as a whole and on the neighborhood of which it will become a part; and proposed actions to mitigate identified concerns, if any. A neighborhood meeting is required as per Table 16.89.020 of the City of Canby Land Development and Planning Ordinance.

Finding: The applicant states and staff generally agree that there are no known or identified physical, aesthetic or related social effects that will result from the proposed annexation. There are no identified negative impacts anticipated to create a burden on or harm the community / neighborhood as result of this proposal. Impacts are expected to be generally similar to already existing subdivisions in the area and have been adequately planned for as part of SW Canby DCP.

The applicant held a virtual neighborhood meeting for neighborhood representatives, neighboring property owners and residents on Thursday, May 13, 2021. The meeting was held virtually, rather than in person, to comply with State and County Covid-19 restrictions. Approximately 250 notices were mailed to surrounding residents and property owners including a list of resident addresses provided by Hope Village management for residents in the nearby Meadow and Cascade House buildings. Meeting attendance included four people in total, including the applicant, the applicant’s representative, and the owners of Tax Lot 1500 to the south of the subject site.

The applicant’s representative began the meeting by discussing the proposal, explaining the City of Canby annexation process, residents’ opportunities for input, and then showing maps of the annexation

area. After roughly 10 minutes, the meeting was opened for questions and comments. Much of the discussion was centered on the development of the Southwest Canby Development Concept Plan. The owners of Tax Lot 1500 appealed the initial approval of the Southwest Canby DCP due to the street configuration of the plan near and on their property. The appeal (APP 18-02) was heard by City Council and was rejected, with the City Council approving the DCP and the subdivision application with a specified amendment. The specified amendment included the additional condition of approval that the approval of the Beck Pond subdivision shall not determine the configuration of any future development on Tax Lot 1500 and that any future development proposal on Tax Lot 1500 shall be judged upon its' own merits at the time when an application is submitted. Being as though the applicant and none of the City Planning Staff were involved in the approval of the Southwest Canby DCP, the information from the owners of Tax Lot 1500 was extremely helpful. Based on the information from the owners of Tax Lot 1500, the applicant revised the conceptual development plan for the proposed annexation site to conform to their plan for the extension of SW 15th Avenue through their site. After approximately 30 minutes of discussion and questions, the meeting was ended.

Minutes of that meeting are part of the record. Staff finds this criteria has been met.

4. Statement of availability, capacity and status of existing water, sewer, drainage, transportation, park and school facilities;

Finding: The applicant indicates in the submitted narrative that all required services are available to adequately provide for the future development of the subject property. Existing sewer, water, power and other utility infrastructure are already in place or will be extended as appropriate to accommodate the annexation area. This infrastructure is currently capable of providing service to the future development of Redwood Landing 2, which includes this proposed annexation area. The applicant proposes drywells and on-site roof stormwater percolation systems through the building permit process of Redwood Landing 2 subdivision's individual lot approvals to address stormwater runoff. These stormwater systems will be evaluated by a professional engineer and coordinated with the Canby's City engineer.

The subject parcel is in a Development Concept Plan Area of the Canby Annexation Development Map. The applicant is aware of the obligation to provide dedications for future public facilities and the construction of streets and water and sewer lines as well as other related development. The adopted Development Concept Plan demonstrates how utility infrastructure will be made available, and unmanageable capacity issues were not identified by City departments and agencies during this review process. Staff finds these criteria can be met at the time of development.

5. Statement of increased demand for such facilities to be generated by the proposed development, if any, at this time;

Finding: The annexation and rezone currently proposed will not increase demand for public services. Staff and applicant acknowledge that future subdivision of the property will create buildable lots for single family homes that will increase demand for public water, sanitary sewer, streets, emergency services, parks and schools. These utilities and services would be provided by the developer through construction of new public utility infrastructure at the time of subdivision approval. System Development Charges (SDCs) are paid by the homebuilders at the time Site and Design review is approved for each lot, meant to offset impacts to the utility, roadway, and park or school system.

6. Statement of additional facilities, if any, required to meet the increased demand and any proposed

phasing of such facilities in accordance with projected demand;

Finding: No phasing or additional facilities or infrastructure is required or anticipated with this annexation proposal.

7. Statement outlining method and source of financing required to provide additional facilities, if any;

Finding: Public facilities needed to serve the development will be provided by the development through construction of new facilities by a developer and through payment of SDC fees by homebuilders building homes within the development. Homebuilders will also pay the construction excise tax for the school district.

8. Statement indicating the type and nature of any Comprehensive Plan text or map amendments or Zoning text or map amendments that may be required to complete the proposed development. Proposed zoning must be consistent with zoning identified in any applicable adopted Development Concept Plan. (Ord. 1292, 2008; Ord. 1422, 2015);

Finding: The proposed use of the site is consistent with the adopted Comprehensive Plan Map designation and the text contained in the City's Land Development and Planning Ordinance, No text or map amendments are required for development of this site.

9. Compliance with other applicable city ordinances or policies;

Finding: According to the applicant's submittal and City of Canby ordinances and policies, staff finds that this proposal is in compliance with applicable regulations as conditioned.

10. Compliance of the application with the applicable sections of Oregon Revised Statutes Chapter 222. (Ord. 740 section 10.6.40, 1984; Ord. 981 section 37, 1997; Ord. 1294, 2008);

Finding: As stated above, the applicant indicates in the submitted narrative that The State of Oregon passed Senate Bill 1573, effective March 15, 2017. The bill eliminated specific requirements for election requirements when processing annexations if specific criteria are met, specifically the annexation must demonstrate that:

1. Be submitted by all owners of land in the annexation territory;
2. The annexation territory must be included within the urban growth boundary of the city or Metro and is, or will be, subject to acknowledged comprehensive plan of city;
3. At least one parcel in the annexation territory must be contiguous to city limits; and
4. The proposal must conform to all other requirements of the city's ordinances.

Staff finds that the proposal meets the above criteria. The application contains a signed petition of owners of record in the application, is within the urban growth boundary, is subject to the comprehensive plan and has contiguous city limits with property to the north, south, east and west. As a condition of approval, the proposal shall meet all other requirements as stated in the city's development code and ordinances. Therefore, this annexation proposal may forego the elections proceedings stated in CMC 16.84.030. Staff finds that the applicant has met the applicable standards of ORS Chapter 222.

CMC 16.89.060 Process Compliance

16.89.060 Type IV Decision

For certain applications, the City Council makes a final decision after a recommendation by the Planning Commission. These application types are referred to as Type IV decisions.

- A. Pre-application conference. A pre-application conference may be required by the Planning Director for Type IV applications.**

Finding: A Pre-application conference was held on April 8, 2021.

- B. Neighborhood meetings. The applicant may be required to present their development proposal at a neighborhood meeting (see Section 16.89.070). Table 16.89.020 sets the minimum guidelines for neighborhood review but the Planning Director may require other applications to go through neighborhood review as well.**

Finding: A neighborhood meeting consisted with standards was held by the applicant on Thursday, May 13, 2021. The meeting was held virtually due to State and County COVID-19 restrictions. Meeting minutes are included in the applicant materials attached to this report.

- C. Application requirements. Type IV applications shall be made on forms provided by the Planning Director. The application shall be accompanied by all required information and fees.**
- D. Public notice and hearings. The public notice and hearings process for the Planning Commission's review of Type IV applications shall follow that for Type III applications, as provided in subsections 16.89.050.D and 16.89.050.E.**

Finding: The standards for application requirements and public noticing have been met.

- E. Decision process.**

- 1. Approval or denial of a Type IV decision shall be based on the standards and criteria located in the code.**
- 2. The hearings body shall issue a final written order containing findings and conclusions recommending that the City Council approve, approve with conditions, or deny the application.**
- 3. The written decision shall explain the relevant criteria and standards, state the facts relied upon in rendering the decision, and justify the decision according to the criteria, standards, and facts.**
- 4. In cases involving attorneys, the prevailing attorney shall prepare the findings, conclusions, and final order. Staff shall review and, if necessary, revise, these materials prior to submittal to the hearings body.**

F. City Council proceedings:

1. Upon receipt of the record of the Planning Commission proceedings, and the recommendation of the Commission, the City Council shall conduct a review of that record and shall vote to approve, approve with conditions, or deny the recommendation of the Planning Commission.

2. The City Council may question those individuals who are a party to the public hearing conducted by the Planning Commission were if the Commission's record appears to be lacking sufficient information to allow for a decision by the Council. The Council shall hear arguments based solely on the record of the Commission.

3. The City Council may choose to conduct public hearings on Comprehensive Plan amendments, amendments to the text of this title, zone map amendments, and annexations. If the Council elects to conduct such hearings, it may do so in joint session with the Planning Commission or after receiving the written record of the Commission. (Ord. 1080, 2001)

Finding: Annexations are processed as a Type IV “quasi-judicial” process which is considered through a public hearing at the Planning Commission that forwards a recommendation to the City Council. The City Council also holds a public hearing and issues a final decision. The notice requirements are the same as for Type III applications.

In this particular case, the annexation request will not be scheduled for a public vote. On March 15, 2016, the Governor signed Senate Bill SB1573 that mandates some properties, meeting certain criteria, to file for annexation without going through a public vote process that might otherwise currently be in effect through local City Charter provisions and adopted code. This application meets the criteria stated in SB1573, and a public vote will not be held for this annexation application.

Notice of this application and the Planning Commission and Council Hearing dates was made to surrounding property owners on July 27, 2021 at least 20-days prior to the hearing. Prior notification and neighborhood meetings were completed during the application process. The site was posted with a Public Hearing Notice sign on September 7, 2021. Notice meeting ordinance requirements of the public hearings was published in the Canby Herald on September 1, 2021. The A pre-application conference was held on April 8, 2021. These findings indicate that all processing requirements have been satisfied with this application to date.

IV. Public Testimony Received

Notice of this application and opportunity to provide comment was mailed to owners of lots within 500 feet of the subject properties and to all applicable public agencies and City departments on July 27, 2021. Complete comments are documented in the file. As of the date of this Staff Report, one comment from a member of the public has been received and is attached to this report.

Conclusion Regarding Consistency with the Standards of the Canby Municipal Code

Staff concludes, as detailed in the submittal from the applicant and as indicated here in this staff report, including all attachments hereto, that:

1. The applications and proposed use is in conformance with applicable sections of the City's Comprehensive Plan and Land Development and Planning Ordinance when the determinations contained in this staff report are applied.
2. The proposed annexation can meet the approval criteria set forth in CMC 16.84.040.A.
3. The zoning of the property, if annexed, shall be R-1.5 as indicated in the application and pursuant to the approval criteria set forth for map amendments in CMC 16.54.040.
4. The proposed annexation's requested zoning district of R-1.5 is in conformance with the Comprehensive Plan Land Use Plan Map and the SW Canby Development Concept Plan.
5. The application complies with all applicable Oregon Revised Statutes.
6. There are sufficient public and private agency utility and service capacity to serve the site at the anticipated development intensity.

V. Recommendation to Planning Commission: ANN 21-02/ZC 21-02

Based on the application submitted and the facts, findings and conclusions of this report, but without benefit of a public hearing, staff recommends that the Planning Commission recommend to the City Council that:

1. The Planning Commission move to recommend ANN 21-02/ZC 21-02 for approval to the City Council;
2. The Planning Commission move to change the zoning of the subject property from Clackamas County EFU to City of Canby R-1.5 as indicated by the Canby Comprehensive Plan Map and the SW Canby Development Concept Plan.

The Planning Commission move to attach the following conditions to this recommendation of approval:

1. Annexation (ANN 21-02) and Zone Change (ZC 21-02) must be free of appeals and final land use decisions as defined by ORS 197.015 prior to gaining subdivision approval. Any action on behalf of the applicant that invalidates or disqualifies ANN 21-02 and ZC 21-02 would require another Type IV review before subdivision through the City of Canby is an option.
2. Annexation approval shall conform to all other applicable City of Canby ordinances, municipal code, state law and administrative rule.